In the High Court of Uttaranchal, at Nainital.

Chapter VIII, Rule 32 (2) (b)
Description of Case.

Criminal Appeal No. 238 of 2003

Heera Singh @ Kannu ..Vs… State.

Date of decision: 4th March, 2005

For the approval of :

Hon'ble Mr. Justice Irshad Hussain, J.

Hon'ble Mr. Justice Rajesh Tandon, J.

- Whether the order/judgment should be Sent for reporters for reporting? (Yes)

- Whether the reporters be allowed to See the judgment? (Yes)

ISB

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 238/2003

Heera Singh Kannu S/o Govind Singh
R/o village Thapaliya Ganja, Patti Sayat,
Tehsil and District Nainital … Appellant.

Vs.

State of Uttaranchal … Respondent.

Sri D.S. Rawal, learned counsel for the appellant.
Sri H.C. Pandey, leaned A.G.A. for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Dated: March 04 , 2005.

Per: Hon'ble Mr. Justice Irshad Hussain.

Appellant Heera Singh has been convicted and sentenced to undergo imprisonment for life under Section 304-B I.P.C. for having committed the dowry death of his wife Smt. Maya Devi in the night between 7/8-3-2002, per judgment and order dated 14/16-8-2003, in Sessions Trial No. 261/2002/

2- According to the prosecution, victim Smt. Maya Devi was married to appellant Heera Singh on 16-4-2001, where after they started residing together in village Thapliya Ganja, within the Patwari Circle Sayat of District Nainital. Appellant's father Govind Singh and mother Smt. Munni Devi were also residing in the same house. On 9-3-2002 at about 4.35 p.m. written information, Ext.-1 about the unnatural death of Smt. Maya Devi was given to Circle Patwari, Tej Singh Negi (P.W.5) by Govind Singh Negi, the father of the appellant. It contained the information that yesterday morning of 8-3-2002 the appellant's mother went inside the room where the appellant and his wife were sleeping. Appellant's mother Smt. Munni Devi asked them to woke-up. The appellant responded to the call but appellant's wife gave no response, as she was found to be dead and lying as such on the bed. The occupants claimed that they knew nothing about the cause of death and with this assertion the said report was given to the Circle Patwari next day on 9-3-2002.

3- On the basis of this information Circle Patwari went to the village of the incident and held inquest on the dead body of Smt. Maya Devi in the morning of 10-3-2002 and prepared the inquest report, Ext. Ka.3. The packed and sealed dead body of the deceased was then dispatched for post mortem along with relevant documents. The post mortem was conducted the same day, that is, 10-3-2002 at 3.00 p.m. by Dr. S.P. Singh assisted by Dr. D.N. Pauryal (P.W.4) and post mortem report, Ext. Ka.2 was prepared.

4- On 11.3.2002 Pratap Sigh (P.W.1), brother of Smt. Maya Devi submitted a written report, Ext. Ka. 1 to the Circle Patwari, wherein it has been alleged that soon after the marriage the appellant and his parents subjected the deceased to harassment and ill-treatment for not bringing adequate dowry and she was coerced to bring cash amount by way of dowry from her parents and that Smt. Maya Devi has been murdered by the appellant and his parents for not meeting the demand of extra dowry and cash amount.

5- On the basis of this report, check F.I.R., Ext. Ka.10 was prepared at 10.30 a.m. on 11-3-2002 and the case against the appellant and his parents was registered under Section 304-B I.P.C. vide G.D. Report of the same date, Ext. Ka.11. Since it was stated to be a case of dowry death, the Circle Patwari sent the relevant papers for investigation to be made by the Deputy Superintended of Police, Sri Narayan Singh (P.W.6), C.O. Ram Nagar, District Nainital, who on completion of the investigation of the case, submitted charge sheet, Ext.La.13 against the mother-in-law Smt. Munni Devi and charge sheet, Ext. Ka.14 against the husband, appellant Heera Singh and father-in-law Govind Singh in the month of July, 2002.

6- Appellant and his parents were committed to Court of Sessions and on 20-11-2002 and they were charged for committing the offences punishable under Section 304-B I.P.C. and ¾ Dowry Prohibition Act, 1961. At the trial, prosecution examined six witnesses to prove the charges against the appellant and others. Pratap Singh (P.W.1) and his mother Smt. Heera Devi (P.W.2) have corroborated the case of the prosecution that Smt. Maya Devi was subjected to harassment and ill-treatment for and in connection with the demand of dowry and that on failure to meet the demand Smt. Maya Devi was murdered by the

appellant and his parents. Trilok Singh (P.W.3) is the maternal uncle of Smt. Maya Devi and he also supported the prosecution case of harassment and ill-treatment of the victim for not meeting the demand for extra dowry.

7- Dr. D.N. Pauryal (P.W.4) gave evidence to prove the factum of conducting the autopsy on the dead body of Smt. Maya Devi at 3.00 p.m. on 10-3-2002 in assistance with Dr. S.P. Singh. He proved the post mortem report and proved that in the dead body rigor mortis had already passed from upper limbs and was in passing stage in lower limbs. Greenish discoloration present in iliac-fossae and foul smell was present. Frothy blood was coming out from both the nostrils and moubh, lips wer blue, tongue swollen and dark in colour and faecal matter was present in and around anus. The ante-mortem injuries detected were as under:-

(1) Ligature mark well defined and slightly depressed present in anterior half of neck, extending from posterior border of left sterno cleidomastoid muscle to the right sterno cleidomastoid muscle. It was horizontal, length 29 c.ms., width 1.2 c.ms. Groove was dry hard and parchment like.

On cutting the ligature mark parchment like subcutaneous tissue present with an extra vexation of blood. Hyoid bone was fractured.

(2) One circular abrasion of size 1.5 c.m. diameter present, 4.00 c.m. above and lateral to left anterior, superior iliac-spine.

On internal examination, brain was found congested and left side of thyroid cartilage was found fracture. Both the lungs were congested with dark fluid blood in them.

In the opinion of the Medical Officer the cause of death was asphyxia due to strangulation and the death had occurred about 2-3 days ago. He also gave out in the cross-examination that there was little possibility of the victim having committed suicide because the ante-mortem injuries found on the dead body could not possibly be sustained if some one commit suicide himself by hanging with the help of a rope by the neck. He also stated that the injuries were probably sustained by strangulation with the help of a cord-like structure.

8- Tej Singh Negi (P.W.5) Circle Patwari proved the steps taken by him in connection with the preliminary investigation after the report was received by him from the father of the appellant and also the steps taken to register the case against the appellant and others on the basis of the written report filed by the brother of the victim.

9- Sri Narayan Singh (P.W.6) was posted as Circle Officer, Ram Nagar. He was entrusted investigation of the case on 12-4-2002. He recorded the statements of the witnesses and prepared the site plan of the place of the incident, Ext. Ka.12. On completion of the investigation, charge sheets, as stated above, were submitted against the appellant and others.

10- The appellant in his statement under Section 313 Cr.P.C. pleaded not guilty and denied the accusation of the prosecution. He showed his ignorance about the written report, Ext. 1 submitted to the Circle Patwari by his father Govind Singh. It may be stated her that accused Govind Singh himself has denied to have given such a report to the Circle Patwari. No evidence was adduced in defence and on appreciation of the evidence on record the learned Sessions Judge, Nainital ground that the case of the prosecution stand established against the appellant beyond doubt for the offence punishable under Section 304-B I.P.C. but did not record the verdict of guilt with reference to the offence under Section ¾ Dowry Prohibition Act 1961 in view of such an offence also stand covered by Section 304-B I.P.C. proved against the appellant. The appellant was accordingly convicted and sentenced as aforesaid. The other two accused, the father and mother of the appellant, were acquitted of the charges against them. State has not filed any appellant against their acquittal.

11- We have heard at length the learned counsel for the appellant and the learned Additional Government Advocate and have carefully considered the evidence on record and have gone through the judgment under appeal with the help of the learned counsel.

12- Learned counsel for the appellant argued that there is no reliable evidence to prove the charge levelled against the appellant and that the learned Sessions Judge made an error in placing implicit reliance on the evidence of P.W.1, P.W.2 and P.W.3 to infer that the deceased was subjected to ill-treatment and harassment for and in

connection with the demand of dowry and cash money and that the appellant committed the murder by strangulation on account of the demand for dowry having not been satisfied. On the other hand learned State counsel defended the inference drawn by the learned Sessions Judge on appreciation of the evidence of the prosecution and contended that the charge against the appellant was stand proved beyond doubt on the basis of the evidence adduced in the case and that the appellant was rightly convicted and sentenced for committing and dowry death of his wife.

13- With a view of appreciation the evidence of the prosecution with regard to the offence involved in the case we feel it proper to refere to the definition of section 304-B I.P.C. which deals with the dowry death. It reads as under:-

> "**304-B. Dowry death-** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

14- From the above, it is evidence that the essentials, which need to be satisfied to bring home guilt to a culprit for an offence under Section 304-B I.P.C. may be narrated as below:-

(a) The death of the wife must have been caused by burn or bodily injuries or otherwise than normal circumstances;

(b) it must occur within seven years of the marriage;

(c) the wife should have been subjected to cruelty or harassment soon before her death by the culprit-husband or his relatives and

(d) such cruelty or his harassment must have been for and in connection with dowry demand.

15- Section 113-B of the Evidence Act being also relevant need reproduction. It reads as follows:-

> **"113-B. Presumption as to dowry death-** When the question is wither a person has committed a dowry death of a woman

and it is shown that soon before of her death such woman has been subjected by such person of cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death."

Explanation- For the purposes of this Section dowry death shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).

It need to be stated that under explanation to Section 304-B I.P.C. the dowry shall have the same meaning as in Section-2 of the Dowry Prohibition Act, 1961 (28 of 1961). Therefore, it is also relevant to reproduce the Section –2 of the Dowry Prohibition Act, 1961, which reads as below:-

"Section 2, Definition of Dowry- In this Act, the 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

Explanation(i)- For the removal of doubts it is hereby declared that any presents made at the time of the marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this Section, unless they are made as consideration for the marriage of the such parties.

Explanation (ii)- The expression 'valuable security' has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

16- From above definition of 'dowry' it is evidence that there are three occasions when any property or valuable security is normal given. One is before the marriage, second is at the time of marriage

and the third at any time after the marriage. The third occasion may occur till the marriage subsists between the parties irrespective of any limitation of time of period. In the instant case, the case of the prosecution was that soon after the marriage the appellant and his parents started making demand for extra dowry even by way of cash amount and for not bringing and fulfilling the demand, the wife Smt. Maya Devi was subjected to cruelty and harassment. As stated above the marriage was solemnized on 16-4-2001 and according to the prosecution the wife met her homicidal death in the night between 7/8-3-2002. In between above period the demand for extra dowry has been made by the appellant and the learned Sessions Judge has accepted the evidence of the prosecution in that regard. The learned counsel for the appellant also questioned the propriety of the finding of the learned Sessions Judge in that regard and the submission of the learned counsel need to be considered in relation to the evidence on record to arrive at the definite conclusion in relation to the demand of dowry by the appellant.

17- Before considering the evidence in the light of the argument it also need to be stated that to establish that the victim (wife) was subjected to cruetly or harassment soon before her death, the necessary ingredients of Section 304-B I.P.C. ,must be established. It is also then that the presumption under Section 113-B of the Evidence Act is also legitimately drawn as the essential ingredient that the victim should have been subjected to cruelty or harassment, soon before her death, is common under both these provisions of the Evidence Act as well as Indian Penal Code. The other ingredient to being the death within the purview of ‘dowry death’ it also need to be established that the death was caused otherwise than under normal circumstance. In other words the possibility of a natural or accidental death has to be ruled out. The expression ‘soon before her death; is a relative term which is required to be considered under specific circumstances of each case. as reiterated by the Apex Court in the matter of Kamesh Panjiyar alias Kamlesh Panjiyar versus State of Bihar; 2005 A.I.R. S.C.W. 770 the expression ‘soon before’ would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There

must be existence of proximate and live link between the effects of cruelty based on dowry demand and the concerned death. Keeping in view these legal principles we proceed to consider the evidence in the case with reference to the submissions made by the learned counsel for the parties.

18- To begin with it is of significance that the defence did not dispute the claim of the prosecution that the death of the victim, Smt. Maya Devi occurred otherwise than in normal circumstances. P.W.3, Trilok Singh, the maternal uncle of the victim was specifically suggested that the victim committed suicide. He vehemently denied the suggestion of the defence. P.W.4, Dr. D.N. Pauryal, who assisted in the post mortem conduced on the dead body of the victim, was also given similar suggestion. He also refuted the same and reiterated that there was hardly any possibility of the victim having committed suicide by hanging with the help of rope. The medical evidence referred above is definite on the point that the death of the victim Smt. Maya Devi was in circumstances other than natural as the cause of death was asphyxia due to strangulation. In a situation like this there was no point or at any rate any force in the argument of the learned counsel for the appellant that fracture of the hyoid bone normally occur when it is a case of death by hanging. Learned counsel also tried to support his argument by the observation made in the text book on the subject of Medical Jurisprudence, but it makes little difference when it is proved beyond doubt that the death occurred otherwise than in normal circumstance that is, it was neither natural not accidental. It shall not be out of place to mention that an unsuccessful attempt was made by the defence from the very start to suggest that the victim died natural death. The written information, Ext.1, given by the father of the appellant on 9-3-2002 about the death of the victim is silent as to the cause of death of the victim. The fact that such a written information was given by the father of the appellant was not disputed by the defence. Although in the statement under Section 313 of the Code of Criminal Procedure Govind Singh Negi, the father of the appellant, denied to have given any report to the Circle Patwari, but the cross examination of the complainant P.W.1, Pratap Singh reveal that the defence admit that such a report was given by the father of the

appellant. This witness was asked as to when he came to know about the information in writing given to the Circle Patwari by the father-in-law of the victim, even prior to the F.I.R. lodged by him with the Patwari. It is thus evidence that the written information, Ext.1 was given by the father of the appellant and that this information was silent as to the nature of the death of the victim, although she was found lying dead in the room where she went to sleep in the preceding night along with her husband the appellant. In fact the medical evidence in the case and the above factors admit of only one inference that the victim Smt. Maya Devi was strangulated to death in her maternal home where she was with her husband the appellant in the night between 7/8-3-2002 and that none other than the appellant was the author of the ligature mark sustained in the neck resulting in the fracture of thyroid cartilage leading to her death by asphyxia. In short there can absolutely be no doubt that the death of the victim was homicidal.

19- To satisfy the other ingredient of the offence with which the appellant was charged the prosecution relied upon the evidence of P.W.1, P.W.2 and P.W.3. They supported the allegation that soon before her death the victim has been subjected to cruelty and harassment when the demand for extra dowry even in terms of the cash money made by the appellant was not satisfied or fulfilled by her and her parents. The learned Sessions Judge scrutinized the evidence of these witnesses and went on to accept their claim that as and when Smt. Maya Devi visited her parental house she complained of ill-treatment and harassment meted out to her by her husband appellant to coerce her to being extra dowry, even in terms of cash money from her parents. Learned counsel for the appellant drew attention to the statement of P.W.1, Pratap Singh, the brother of the victim and submitted that the evidence of the witness is shaky and discrepant in regard to the allegation that Smt. Maya Devi complained of her ill-treatment in connection with dowry demand by the appellant and others when she visited her parental house after about twenty days of the marriage. To support his point of view learned counsel pointed out to statement of the witness which is to the effect that the witness has met his sister only once when she visited the parental home after

twenty days of the marriage and thereafter he had no such occasion to meet his sister. Even if the witness has had the occasion to meet his sister only once after the marriage and at that time his sister told him about the ill-treatment given to her by the appellant and others for and in connection with the dowry demand it would not mean that the ingredient that soon before her death Smt. Maya Devi was subjected to cruelty and harassment does not stand satisfied. The reason is that Smt. Maya Devi met her tragic end within a period of less than a year from her marriage and the only occasion when she met the witness after about twenty days of the marriage to make complaint of her harassment and ill-treatment it can not be said that the period was not proximate to the interval between the cruelty or harassment and the death of the victim of the case. In fact we are of the firm view that the evidence of this witness fully satisfied the above ingredients that soon before her death the victim of the case was subjected to cruelty and harassment for and in connection with the dowry demand.

20- The evidence of P.W.1 also stand corroborated by the statement of his mother Smt. Chandra Dvi (P.W.2). She also categorically stated that her daughter Smt. Maya Devi complained of ill-treatment and harassment meted out to her for and in connection with the dowry demand when her daughter visited her house with her husband even for the first time after the marriage. She also gave out that the demand for money was also raised from her when the first child, a baby boy was born to her daughter and on the occasion of the naming ceremony she visited the house of the appellant with her brother Trilok Singh (P.W.3). At that time also Smt. Maya Devi told the witnesses all about her ill-treatment and harassment for and in connection with dowry demand even in terms of cash money amounting to Rs. 50,000/-. She was subjected to piercing cross-examination but nothing seems to have been elicited as may assail her credibility and trustworthiness of her evidence. We find no merit in the argument of the learned counsel for the appellant that absence of these specific allegations in the written F.I.R., Ext. Ka.1, tell upon the credibility of the evidence of the witnesses. The reason is that a F.I.R. is not supposed to contain every minute detail in regard to the demand of dowry and harassment and since the F.I.R. is definite in

regard to the cruelty and harassment meted out to Smt. Maya Devi for and in connection with the dowry demand soon before her death any specific omission in relation to the definite sum of money etc would not entertain any doubts in the reliability of the evidence of the witnesses of the prosecution.

21- P.W.3, Trilok Singh, the maternal uncle of the victim also spoke of the cruelty and harassment to Smt. Maya Devi soon before her death. Considering the close relationship of the victim with the witness it was quite natural on the part of the victim Smt. Maya Devi to have told the witnesses about her ill-treatment for and in connection with the dowry demand when she visited her parental house after the marriage the witness also stated that the victim told him that the demand in terms of cash money of Rs. 50,000/- was also raised by the appellant and others and we find nothing of substance as may discredit the credibility of this witness also. Considering the peculiar facts and circumstances of the case we also find no force in the argument of the learned counsel for the appellant that no independent witness or any witness of the vicinity of the marital home of the victim was produced by the prosecution and therefore the allegation of cruelty and harassment for and in connection with the dowry demand soon before the death of the victim has not been established. normally a harassed bride would complain of the conduct and behavior of her husband and other relative to her parents or brother or any other close relative instead of telling all about it to the neighbours of her marital home and considering this peculiar aspect of the matter the learned Sessions Judge rightly placed reliance on the evidence of these three witnesses for proof of the ingredients of the offence referred above.

22- It was also argued by the learned counsel for the appellant that the highly belated F.I.R. of the case can not be taken to corroborate the evidence of the prosecution. No doubt the F.I.R. alleging commission of the offence by the appellant and others was lodged on 11-3-2002 by P.W.1, but we can not lose sight of the fact that the matter was being already looked upon on the basis of the written information of the death of the victim given by the father of the appellant on 9-3-2002. This apart, the informant also gave explanation for the delay that he was informed about the death of his sister while

he was in Delhi in connection with his employment there and on receiving the information he came back to Ram Nagar and then to Nainital where after the written report was delivered to the Circle Patwari, on the basis of which check F.I.R., Ext. Ka. 10 was prepared. In the peculiar circumstances of the case, the explanation of delay being plausible, we are not inclined to accept the submission that the F.I.R. of the case can not be taken to corroborate the prosecution version and the evidence of the witnesses examined in the case.

23- From the evidence nothing of importance could be pointed out as may indicate any glaring defect in the investigation of the case and which may in any way case any suspicion in the veracity of the prosecution version and reliable evidence examined in the case. learned counsel for the appellant submitted that in this case the statement of the appellant was not properly recorded under Section 313 of the Code of Criminal Procedure in as much as the learned Sessions Judge did not try to elicit information from his about the manner in which the victim Smt. Maya Devi suffered death under the circumstances other than natural and therefore the failure on the part of the trial court has the effect of vitiating the trial of the appellant. Learned counsel placed reliance on the reported decision of the Apex Court in the case of Laloo Manjhi and another versus State of Jharkhand; 2003 Supreme Court Decisions (Cri) 544 and in the matter of Avtar Singh and others versus State of Punjab; A.I.R. 2002 Supreme Court 3343. We have gone through the reported decisions wherein it had been reiterated that the object of the examination of the accused under Section 313 of the Code of Criminal Procedure is to afford an opportunity to accused to explain the circumstances appearing in evidence against him. The questions put to the appellant under Section 313 of the Code of Criminal Procedure pertain to all the circumstances appearing against him and therefore we do not think that the learned Sessions Judge was legally obliged to elicit further information about the cause of death of the wife of the appellant while she was with him in the marital home. In our view there has not been any infraction of the legal requirement of Section 313 of the Code of Criminal Procedure and no prejudice had been caused to the appellant.

24- Learned counsel then submitted that the appellant volunteered to adduce evidence in his defence but no opportunity was afforded and for this reason the conviction of the appellant can not legally be sustained. No doubt the appellant gave out in statement under Section 313 Code of Criminal Procedure that he will adduce evidence in defence but it is of significance that on the date fixed for defence and argument in the case the appellant did not produce any evidence in his defence and the learned Sessions Judge went on to hear the argument of the learned counsel for the parties and then reserved the case for delivery of judgment. The learned Sessions Judge also made reference of it in paragraph-6 of the judgment and considering this aspect of the opportunity to adduce documentary or oral evidence in his defence. No prejudice whatsoever had in fact been caused to the appellant.

25- Having regard to the evidence on record and looking to the peculiar aspects of the case as indicated in the foregoing paragraphs, we are of the view that the trial court rightly believed the evidence of the prosecution that soon before her death the victim Smt. Maya Devi was subjected to cruelty and harassment for and in connection with dowry demand and that for not satisfying the demand she was strangulated to death in her marital home and particularly inside the room which she shared with her husband, the appellant on the ill-fated night between 7/8-3-2002 and that the appellant under these circumstances was rightly held guilty of committing an offence punishable under Section 304-B of the Indian Penal Code. The appellant was sentenced to undergo imprisonment for life considering the manner in which the victim suffered her death by strangulation and that too when she had given birth to a baby boy only a month ago. The victim had also been deprived of the joy of motherhood so soon by the appellant apart from the marital bliss and in a situation like this we are of the view that the sentence of imprisonment for life was the proper punishment for an offence punishable under Section 304-B I.P.C. It also need to be repeated here that the victim suffered dowry death within one year of her marriage with the appellant. The conviction and sentenced passed against the appellant are therefore to be affirmed and the appeal merit dismissal.

26- The appeal is hereby dismissed. The appellant is in jail and he shall serve out the sentence awarded against him.

27- Let the record be sent back to the court concerned for compliance.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

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